

COUNCIL OF THE COUNTY OF MAUI
GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE

December 4, 2020

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on November 5, 2020, and reconvened on November 6, 2020, makes reference to County Communication 19-1, from Council Chair Mike White, relating to the appointment and removal of administrative heads of departments.

By correspondence dated October 21, 2020, the Mayor transmitted a proposed resolution entitled "APPROVING THE REMOVAL OF PROSECUTING ATTORNEY DONALD S. GUZMAN." The purpose of the proposed resolution is to approve the removal of Donald S. Guzman as Prosecuting Attorney, in accordance with Section 8-3.2 of the Revised Charter of the County of Maui (1983), as amended ("Charter").

By correspondence dated October 29, 2020, the Department of the Corporation Counsel transmitted a proposed resolution entitled "DISAPPROVING THE REMOVAL OF PROSECUTING ATTORNEY DONALD S. GUZMAN." The purpose of the proposed resolution is to disapprove the removal of Donald S. Guzman as Prosecuting Attorney, in accordance with Charter Section 8-3.2.

Charter Section 8-3.2 states: "... the prosecuting attorney shall be appointed by the mayor with the approval of the council and may be removed by the mayor with the approval of the council." Your Committee notes there is no deadline for the Council to approve or disapprove the removal.

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At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed resolution approving the removal of the Prosecuting Attorney to correct a referenced date.

Your Committee received oral testimony in support of removing the Prosecuting Attorney, including from five County employees, four of whom are employed in the Department of the Prosecuting Attorney. Of the four Department employees, one employee identified herself as the complainant. The testimony described the Prosecuting Attorney's angry outbursts and verbal threats in the workplace. Most alleged incidents happened recently within the Department of the Prosecuting Attorney, but one occurred about five years ago in a previous workplace. Your Committee thanked the employees for their courageous testimony, which your Committee found credible.

Your Committee also received oral testimony in opposition to the removal of the Prosecuting Attorney, in addition to numerous written testimonies both in support of and in opposition to the removal.

Your Committee met with the Prosecuting Attorney, the complainant, and the Mayor.

Your Committee noted the Prosecuting Attorney requested an open meeting and waived his privacy rights for an executive meeting under Section 92-5(a)(2), Hawaii Revised Statutes ("HRS").

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel and consider sensitive matters related to public safety or security, in accordance with Sections 92-5(a)(4) and 92-5(a)(6), HRS, respectively.

Following the executive meeting, your Committee reconvened in regular session.

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Your Committee met with attorney Kristi O'Heron of the law firm Marr Jones & Wang, hired by the Administration to investigate the complaint. The investigation resulted in a report that concluded the Prosecuting Attorney engaged in "threats of intimidation, to inflict mental harm or injury" in violation of the County's Violence in the Workplace Action Plan.

Your Committee notes the County of Maui Violence in the Workplace Action Plan, as revised on September 1, 2015, is intended to "implement the County of Maui's Administrative Directive on Violence in the Workplace regarding acts of violence in the workplace by any officer, employee, or member of the public and to develop objectives to ensure a safe working environment for all officers, employees, and members of the public while on County of Maui premises and work sites."

The County's Violence in the Workplace Action Plan further states: ". . . as part of its zero-tolerance directive, acts or threats of violence will not be tolerated in the working environment of the County of Maui."

Your Committee met with the Director of Personnel Services. He explained that Mr. Guzman is an appointed employee, not subject to a collective-bargaining agreement or civil-service laws.

The Director of Personnel Services said at-will, non-civil service employees, such as administrative heads of County departments, may be terminated for any or no reason, provided an individual's rights based on protected classes, such as gender and religion, are not violated. He further said high-ranking County officials are made aware of their at-will status upon appointment.

A Deputy Corporation Counsel provided advice consistent with the statements made by the Director of Personnel Services. He advised your Committee that its deliberations were for the purpose of making a legislative-policy decision and not to conduct a trial or other legal proceeding.

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Your Committee recognized the accomplishments of the Prosecuting Attorney since being appointed in April 2019. However, your Committee acknowledged the Prosecuting Attorney has exhibited a pattern of behavior that appears contrary to the principles of the Violence in the Workplace Action Plan.

Your Committee agreed angry outbursts, verbal threats, and all forms of violence in the workplace are not acceptable and stressed the safety of all County employees as a priority.

After thoroughly discussing the matter over two days and giving due consideration to public testimony, the results of an investigative report conducted by Marr Jones & Wang, interviews with the Prosecuting Attorney, the complainant, and the Mayor, and guidance from the Department of the Corporation Counsel and the Department of Personnel Services, your Committee unanimously decided to recommend approval of the Prosecuting Attorney's removal.

Your Committee voted 9-0 to recommend adoption of the revised proposed resolution to approve the removal of Prosecuting Attorney Donald S. Guzman and filing of the proposed resolution to disapprove the removal. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Hokama, Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye."

Your Governance, Ethics, and Transparency Committee RECOMMENDS the following:

1. That Resolution _____, attached hereto, entitled "APPROVING THE REMOVAL OF PROSECUTING ATTORNEY DONALD S. GUZMAN," be ADOPTED; and
2. That the proposed resolution, attached hereto, entitled "DISAPPROVING THE REMOVAL OF PROSECUTING ATTORNEY DONALD S. GUZMAN," be FILED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.

A handwritten signature in cursive script, appearing to read "Michael J. Molina", written over a horizontal line.

MICHAEL J. MOLINA, Chair

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Resolution

No. _____

APPROVING THE REMOVAL OF PROSECUTING ATTORNEY DONALD S. GUZMAN

WHEREAS, pursuant to Section 8-3.2 of the Charter of the County of Maui (1983), as amended, the prosecuting attorney shall be appointed by the Mayor with the approval of Council and may be removed by the Mayor with the approval of the Council; and

WHEREAS, by letter dated and received by the Council on October 21, 2020, Mayor Michael P. Victorino notified the Council that he seeks Council's concurrence on the removal of Donald S. Guzman from his appointment as prosecuting attorney; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby approves of the removal of Donald S. Guzman as prosecuting attorney; and
2. That a certified copy of this resolution be transmitted to the Mayor.

APPROVED AS TO FORM AND LEGALITY

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Department of the Corporation Counsel
County of Maui

Resolution

No. _____

DISAPPROVING THE REMOVAL OF
PROSECUTING ATTORNEY
DONALD S. GUZMAN

WHEREAS, Section 8-3.2 of the Revised Charter of the County of Maui (1983), as amended, authorizes the Mayor to appoint the Prosecuting Attorney with the approval of the Council, and to remove the Prosecuting Attorney with the approval of the Council; and

WHEREAS, by correspondence dated October 21, 2020, Mayor Michael P. Victorino requested the Council approve the removal of Donald S. Guzman as Prosecuting Attorney; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it disapproves the removal of Donald S. Guzman as Prosecuting Attorney; and
2. That certified copies of this Resolution be transmitted to the Mayor, the Corporation Counsel, and Donald S. Guzman.

APPROVED AS TO FORM AND LEGALITY



Digitally signed by Gary Murai
DN: cn=Gary Murai, o=Corp.Counsel,
ou=C & D,
email=gary.murai@co.maui.hi.us, c=US
Date: 2020.10.29 13:41:36 -10'00'

Deputy Corporation Counsel
County of Maui

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